93-460

NO.

Supreme Court, U.S.
FILED
AUG - 2 1993
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER 1993

SAMMY BAUGHMAN, a.k.a.
SAMMY BOUGHMAN,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SOUTH CAROLINA SUPREME COURT

SUPPLEMENTAL APPENDIX

Jan R. Waddell Sr., Esquire
Counsel of Record
420 West Breckinridge Street
Suite D-3
Louisville, Kentucky 40203
(502) 587-7464

STATE OF SOUTH CAROLINA	)	IN THE COURT OF
	)	COMMON PLEAS OF
	)	THE NINTH
	)	JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	CASE NO:
		91-CP-08-1608
		90-GS-08-795
SAMMY BAUGHMAN a/k/a SAMMY BOUGHMAN,	)	
	)	
Petitioner,	)	
	)	
vs.	)	ORDER
	)	
PAUL DOUGLAS TAYLOR WARDEN OF LIEBER CORRECTIONAL INSTITUTION,	)	
	)	
Respondent.	)	

THIS MATTER came before this Honorable Court on October 18, 1991 pursuant to a Petition For Writ Of Habeas Corpus filed by Petitioner on September 27, 1991.

This Court issued its Order to Show Cause Why Writ Should Not Be Granted which was heard on October 18, 1991.

Petitioner Sammy Baughman requested this Court to set aside the previous sentence handed down by Judge Luke N. Brown on only

November 26, 1990 as being a violation of the double jeopardy provision of the Fifth Amendment of the U.S. Constitution and Article I, Section 12 of the South Carolina State Constitution.

The Respondent State of South Carolina, through the office of the Attorney General of South Carolina, by staff attorney Lisa G. Jefferson, filed a Return to said Petition.

Respondent challenged the Petition for the Writ as not being timely filed pursuant to S.C. Code Section 17-17-20. That section states:

> "If any person shall have willfully neglected by the space of two whole terms after his imprisonment to pray a Habeas Corpus for his enlargement such person, so willfully neglecting, shall not have any Habeas Corpus to be granted in vacation time in pursuance of this chapter."

This section seeks to restrict the hearing of a Habeas Corpus Writ to only

scheduled terms of Court after the first two whole terms have passed. It does not prohibit the filing of the Petition, but limits it to be heard only during scheduled terms of Court, rather than at a special hearing.

The argument by Respondent that Petitioner has forfeited the remedy of, Habeas Corpus is, therefore, dismissed.

Even if the Court did accept Respondent's argument and dismiss the Writ of Habeas Corpus, Respondent has asserted that the matter should be treated as a Post Conviction Relief action, and, if treated as such, would be properly before the Court.

The Court finds that both Petitioner and Respondent have agreed in open Court, on the record, that this Court has jurisdiction to hear the matter. The parties set forth different procedures as the basis of the

Court's jurisdiction.

Since the jurisdiction of the Court has been conceded and accepted by both parties, the Court proceeded to hear the Petition of Mr. Baughman.

There is no dispute of the parties that Mr. Baughman did enter into a written plea agreement with the police department of the Town of Moncks Corner and the Ninth Circuit Solicitor's Office whereby, in exchange for Petitioner's plea to certain charges before the Municipal Court of Moncks Corner, South Carolina, other charges would be dismissed. It is the interpretation of the wording of this plea agreement that is before the Court.

Petitioner was the subject of an undercover investigation by the Moncks Corner Police Department and other law enforcement agencies during June and July,

1989. The parties concede that all offenses alleged against Petitioner occurred during that time period.

Petitioner's plea agreement, entered into the hearing record as Petitioner's Exhibit 1, was dated October 12, 1989 and Petitioner appeared before the Honorable Jack Alan Landis, Esquire, Judge of the Municipal Court of Moncks Corner, South Carolina and pled to the charges of possession of marijuana and possession of drug paraphernalia on November 9, 1989.

The plea agreement specifically stated that "all other charges pending against Mr. Baughman will be dropped, not limited to those listed" under certain warrants.

John B. Williams, Esquire, the attorney who represented Mr. Baughman at the plea before the Municipal Court and who negotiated the plea with the Solicitor's

office, testified that there was no question in his mind that ALL CHARGES, whether actually filed against the Petitioner or being held by the police department and not filed at the time of the plea, were ALL covered by the agreement. Williams further testified it was the purpose of the agreement to close the cases on the Petitioner regarding the investigation of June and July, 1989.

Petitioner was later arrested in June, 1990 and charged with three counts of distributing cocaine. He was represented in this second action by Mitchell Lanier, Esquire, Public Defender for Berkeley County. Both Petitioner and Mr. Lanier testified that Petitioner had made no mention of the 1989 plea agreement to Mr. Lanier.

Petitioner appeared before Circuit Judge

Luke A. Brown in the Berkeley County Circuit Court on November 26, 1990 and pled guilty to one count of distribution of cocaine from charges arising during the June and July, 1989 period. This was the period of time covered by the November 9, 1989 MUnicipal Court plea.

During testimony presented at this hearing, Petitioner testified that he had objected when he was arrested in June, 1990 that all of the charges of June and July, 1989 were disposed of during the November, 1989 Municipal plea. Petitioner testified that officer Wendell Bowen of the Moncks Corner Police Department advised him that these charges were not covered.

Petitioner did not confer with Attorney Williams prior to his November, 1990 plea and Williams testified that he was not aware that Petitioner had been imprisoned under

the prior charges Petitioner pled to until approximately March or April, 1991, long after Petitioner had been sentenced.

This Court faces the question of whether the cocaine charges of 1990 were covered by the plea agreement of 1989. Attorney Williams testified that he drew the plea agreement and that it was his intention that the agreement cover all charges, whether pending or not, and that is why he used the language "not limited to those listed..." when drafting the agreement. The Ninth Circuit Solicitor's Office signed the agreement and, therefore, is bound by the terms thereof.

Petitioner testified that it was his understanding that all charges were covered by the agreement and that is why he raised the issue when arrested.

It was only when the arresting Officer Bowen told Petitioner that the later charges were not covered, did Petitioner plead. When asked why he did not raise the issue with his attorney at the November, 1990 Court appearance, Petitioner testified that he had been advised otherwise by Officer Bowen and, therefore, did not mention the earlier agreement to Mr. Lanier.

Respondent alleges that Petitioner waived any rights he may have had under the 1989 plea agreement by pleading guilty in November, 1990.

It is clear in this state that before a Defendant can waive any rights he may have, he must be aware of those rights and his waiver of those rights must be knowingly and willfully made. In South Carolina a waiver is considered to be an intentional relinquishment of a known right. Brown v.

State Farm Mutual, 233 S.C. 376; 104 SE2d, 673 (1958), Lawrimore v. American Health and Life Insurance Co., 276 S.C. 112; 276; SE2d 296 (1981).

When Petitioner inquired of his rights under the prior plea agreement he was advised by the arresting officer that Petitioner had no rights under the previous agreement. Due to Officer Bowen's action, Petitioner neither knew of his rights nor did he waive them.

Respondents assert that, if Petitioner's 1990 plea was invalid, then all of Petitioner's pleas should be dismissed, the 1989 plea agreement set aside, and Petitioner should face all charges anew.

The Court finds this position to be without basis and support. Petitioner complied with the terms of the 1989 agreement and pled guilty and paid the fine

imposed by the Municipal Court. To set aside the agreement and plea would work a great injustice on the Petitioner who has completed his obligation under the terms of said agreement.

Respondent asserts that there was not a meeting of the minds between Petitioner's attorney and the Solicitor's office regarding the 1989 plea agreement. It is the law of this state and country that plea agreements are to be constructed in the Defendant's favor. "Fair administration of criminal process and of interests of justice do not permit the prosecution to violate, whether intentionally or unintentionally, promises made in negotiation of guilty pleas." U.S. V. Barrett, (D.C.S.C.) 390 F. Supp. 1022 (1975), quoting U.S. v. Ewing, 489 F.2d. 1141 (5th Cir. 1973).

To allow the position of the Respondents

to prevail would be to put the state in a no-lose position. If the Defendant entered into a plea agreement with the State and served his sentence, whatever it may be, he could find himself facing the same charges at a later time. If the Defendant then alleged that the charges were disposed of in an earlier agreement, the prosecution could then say: "No, you misunderstood. Since you misunderstood we will throw out your earlier plea and start all over again."

Petitioner Sammy Baughman has no interest in starting all over again. He has already served almost one year in prison. This time cannot be given back to him. To coerce him into withdrawing this appeal by alleging that the prior agreements entered into by him may be later dismissed by the Court after he has completed the sentence would certainly expose Petitioner to double

jeopardy, in as much as the charges had unquestionably already been disposed of in the Municipal Court.

The questions that this Court must answer are (1) Were the cocaine charges for which he appeared in Circuit Court in 1990 covered under the 1989 Municipal Court agreement? and (2) Did Petitioner waive any rights he may have had under the 1989 plea agreement by appearing and pleading guilty in November, 1990?

This Court finds that it was clearly the understanding of the Petitioner and his attorney that the 1989 plea agreement covered ALL CHARGES, listed or not; and that, pursuant to said agreement, Petitioner should not have been prosecuted for the cocaine distribution charges.

Officer Bowen attempts to exclude the cocaine charges by asserting that another

police officer made the charges and Officer Bowen could not speak for the other officer.

Officer Bowen never advised Petitioner nor Petitioner's attorney that Officer Bowen could affect only some of the charges.

Therefore, Petitioner had the right to assume that Officer Bowen had the authority to affect all of the charges, especially since all of the charges occurred within the town limits of the Municipality of Moncks Corner and, therefore, within Officer Bowen's jurisdiction.

This Court also finds that Petitioner did not waive his rights under the plea agreement by appearing and pleading in November, 1990 to one count of distribution of cocaine. Before one can knowingly and intelligently waive one's rights, it is obvious one must know what those rights are.

Police Officer Bowen advised Petitioner that Petitioner, in effect, had no rights under the prior agreement. The police officer testified that he was involved throughout the June and July, 1989 investigations into Petitioner's activities and was aware of the cocaine charges when the 1989 plea agreement was entered into.

It is therefore,

ORDERED, ADJUDGED AND DECREED that the charges of distribution of cocaine to which Petitioner plead guilty on November 26, 1990, in the Ninth Judicial Court for Berkeley County, are hereby dismissed; it is further

ORDERED, ADJUDGED, AND DECREED that the counts of distribution of cocaine for which Petitioner was arrested in June, 1990 are dismissed as having been previously disposed of under the written plea agreement dated

October 12, 1989; and it is further

ORDERED, ADJUDGED, AND DECREED that the Town of Moncks Corner and/or the State of South Carolina are hereby barred and estopped from any further prosecution of Petitioner on any offenses, charges and/or occurrences that arose out of the investigation of Petitioner during June and July, 1989 by agents of the Town of Moncks Corner and/or the State of South Carolina; it is further

ORDERED, ADJUDGED AND DECREED that Petitioner Sammy Baughman a/k/a Sammy Boughman, is hereby released from the South Carolina Department of corrections immediately and unconditionally.

IT IS SO ORDERED!

A. VICTOR RAWL
Judge, Ninth Judicial Circuit Court

Moncks Corner, South Carolina
Dated: October 22, 1991.